

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

DAVID JOSSELYN,

Petitioner,

v.

KATHLEEN DENNEHY,

Respondent.

Civil Action No. 04-10621-GAO

RESPONDENT'S MOTION TO DISMISS

In accordance with Rule 11 of the Rules Governing Section 2254 Cases and Rule 12(b)(6) of the Federal Rules of Civil Procedure, the respondent, by and through her counsel, the Attorney General of the Commonwealth of Massachusetts, hereby respectfully moves to dismiss the petition for a writ of habeas corpus filed by the petitioner, David Josselyn. As grounds therefor, the respondent states that Josselyn failed to properly exhaust his state-court remedies before seeking habeas relief. Specifically, Josselyn did not properly present the federal nature of four of the six grounds in his petition to the state courts. The present petition therefore should be dismissed. Rose v. Lundy, 455 U.S. 509, 522 (1982); 28 U.S.C. § 2254(b)(1). The respondent relies on the accompanying memorandum of law in support of her motion to dismiss.¹

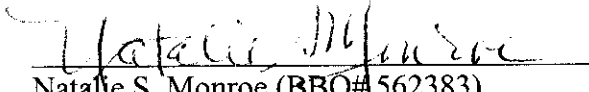
¹ In the event that this motion is not allowed, the respondent respectfully requests thirty (30) days from receipt of the Court's order denying this motion to file a memorandum in opposition to the petition.

WHEREFORE, the present motion should be allowed and an order should enter dismissing Josselyn's petition.

Respectfully submitted,

Dated: September 1, 2004

THOMAS F. REILLY,
ATTORNEY GENERAL


Natalie S. Monroe (BBO# 562383)
Assistant Attorney General
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RULE 7.1 CERTIFICATION

I hereby certify that I attempted in good faith to confer with the plaintiff's counsel, Rosemary Scapicchio, Esq., by telephone on September 1, 2004. On that date, I left a telephone message for Ms. Scapicchio requesting to confer with her on this motion. At the time of filing, counsel had not had the chance to return my telephone call.


Natalie S. Monroe

Certificate of Service

I, Natalie S. Monroe, hereby certify that, on September 1, 2004, I caused to be served a true and correct copy of the foregoing document by mailing a copy of the same by first-class mail, postage prepaid, and addressed to the petitioner's counsel, Rosemary C. Scapicchio, Esq., Four Longfellow Place, Suite 3703, Boston, Massachusetts 02114.


Natalie S. Monroe